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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.U., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES,

Plaintiff and Respondent,

v.

SONIA U.,

Defendant and Appellant.

D050047

(Super. Ct. No. 508666F)

APPEAL from a judgment of the Superior Court of San Diego County, William E. Lehnhardt and Peter E. Riddle, Judges. Reversed and remanded with directions.

Sonia U. appeals the judgment on remand terminating her parental rights over A.U. Sonia's opening brief contends (1) the juvenile court violated her due process rights by vacating, without notice, the order appointing her a guardian ad litem, and by terminating her parental rights when she was not properly noticed of the Welfare and

Institutions Code section 366.26 hearing;¹ (2) the court erred by terminating parental rights without ensuring compliance with the notice requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.); and (3) if this court concludes she forfeited her right to raise the ICWA contention, she received ineffective assistance of counsel. Sonia's counsel, A.U.'s counsel, and counsel for the San Diego County Health and Human Services Agency (the Agency) have filed a stipulation for reversal of the judgment terminating parental rights, including the order vacating the appointment of Sonia's guardian ad litem and the finding that ICWA did not apply. The parties request this court remand the case with directions to (1) renotice the tribes using the proper addresses and designees, (2) give Sonia and A.U.'s father notice of a new section 366.26 hearing, (3) give Sonia notice that appointment of her guardian ad litem will be vacated, and (4) after proper notice, vacate the guardian ad litem appointment and hold a new section 366.26 hearing in accordance with the directions on remand in the previous appeal. Finally, the parties request immediate issuance of the remittitur. We accept the stipulation and reverse. (Code Civ. Proc., § 128, subd. (a)(8); *In re Francisco W.* (2006) 139 Cal.App.4th 695, 711; *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111-112; *In re Rashad H.* (2000) 78 Cal.App.4th 376; Cal. Rules of Court, rule 8.272(c)(1).)

BACKGROUND

The factual and procedural background is set forth in this court's previous opinion. (*In re A.U.* (July 12, 2006, D047847) [nonpub opn.]) In that case, this court reversed the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

judgment terminating parental rights and remanded the case to the juvenile court with the following directions: "(1) require the Agency to give proper notice under applicable federal and state law to any prospective tribes and the [Bureau of Indian Affairs], and file with the court the notices, return receipts, and any responses; (2) vacate the appointment of the guardian ad litem for future hearings in this matter; and (3) hold a new permanency plan hearing under section 366.26 [¶] If, at the permanency plan hearing, the court determines that ICWA notice was proper and no Indian tribe seeks to intervene or otherwise indicates that the child is an Indian child as defined by ICWA, the court shall reinstate its findings and orders terminating parental rights. If, on the other hand, an Indian tribe determines that the child is an Indian child under ICWA, the court shall conduct the jurisdiction, disposition, and all subsequent hearings in accordance with ICWA and applicable state law." (*In re A.U.*, *supra*, D047847.)

On November 17, 2006, the juvenile court held a hearing on remand. The court reappointed counsel for Sonia, found that notice had been given as required by law, vacated the order appointing the guardian ad litem, set a section 366.26 hearing for December 13, and ordered the Agency to give Sonia notice of that hearing. On December 13, the court found that notice had been given as required by law as to Sonia and ICWA notice had been given as directed by this court. The court reinstated its findings and its previous order terminating parental rights. On December 22, Sonia's appellate counsel filed a timely notice of appeal.

DISCUSSION

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

According to the parties' joint application and stipulation for reversal, "the Agency did not provide notice to [Sonia] of the November 17, 2006 special hearing vacating the appointment of the [guardian ad litem] and the December 13, 2006 section 366.26 hearing[;] incorrect addresses and designees were used in sending the JV-135 notices [Juvenile Council form Notice of Involuntary Child Custody Proceedings for An Indian Child (Juvenile Court)] of the November 17, 2006 hearing to the Indian tribes[;] and . . . JV-135 notices should have also been sent in relation to the section 366.26 hearing held on December 13, 2006." Our independent review of the record leads us to conclude that we should accept the stipulation for reversal.

There is no reasonable possibility that reversal will adversely affect the interests of nonparties. A stipulated reversal will expedite the process of ensuring proper notice to A.U.'s parents and proper ICWA notice, and will lessen the delay before a final determination regarding termination of parental rights. This will benefit A.U.'s prospective adoptive parent, who cares for A.U.'s three siblings in addition to A.U. (*In re*

Rashad H, supra, 78 Cal.App.4th at pp. 380-381.) It will also benefit relevant Indian tribes, should ICWA be found to apply. Additionally, there is no reasonable possibility that reversal will adversely affect the interests of the public. While this is a confidential proceeding, the public has an interest in keeping children safe, reunifying them with their families, and, where that cannot be accomplished, placing them in permanent homes as expeditiously as possible. A prompt resolution of the appeal also reduces the expense to the taxpaying public.

The reason the parties request reversal is to allow compliance with the requirements of proper notice to A.U.'s parents and proper ICWA notice. Because a stipulated reversal will expedite the compliance with these requirements, as well as permanence for A.U., the public trust will not be eroded. On the contrary, public trust in the courts and their judgments will be advanced by knowing that the Agency, counsel, and the courts will seek to correct errors promptly and reasonably, avoiding delays that might affect children and families. (Cf. *In re Rashad H.*, *supra*, 78 Cal.App.4th at p. 381.) The parties' agreement that the judgment must be reversed to provide proper notice will not lead to a risk of reducing any incentive for pretrial settlement. (*Ibid.*)

DISPOSITION

The judgment terminating parental rights is reversed. The matter is remanded to the juvenile court with directions to (1) renotice the Indian entities using the proper addresses and designees; (2) give Sonia and A.U.'s father notice of a new section 366.26 hearing; (3) give Sonia notice that appointment of her guardian ad litem will be vacated; (4) after proper notice, vacate the guardian ad litem appointment and hold a new section

366.26 hearing; and in all other respects comply with the directions on remand in case number D047847. The remittitur is to issue forthwith.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.